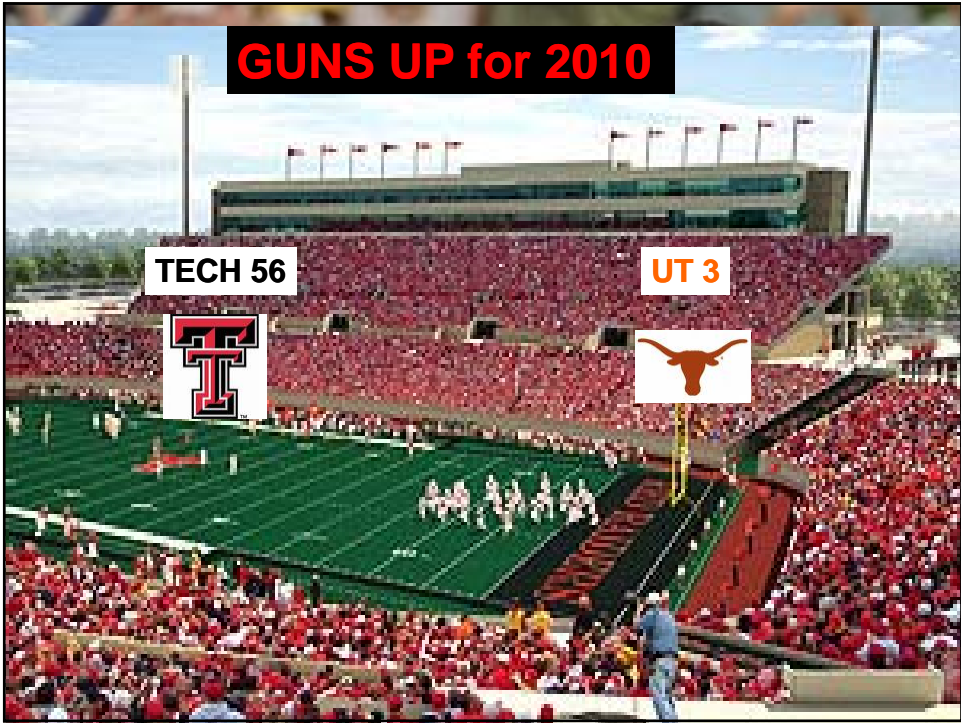


**SELLING MUNICIPAL PROPERTY FOR
ECONOMIC DEVELOPMENT**

PETER G. SMITH
Nichols Jackson, Dillard, Hager & Smith, L.L.P.

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Economic Development Projects

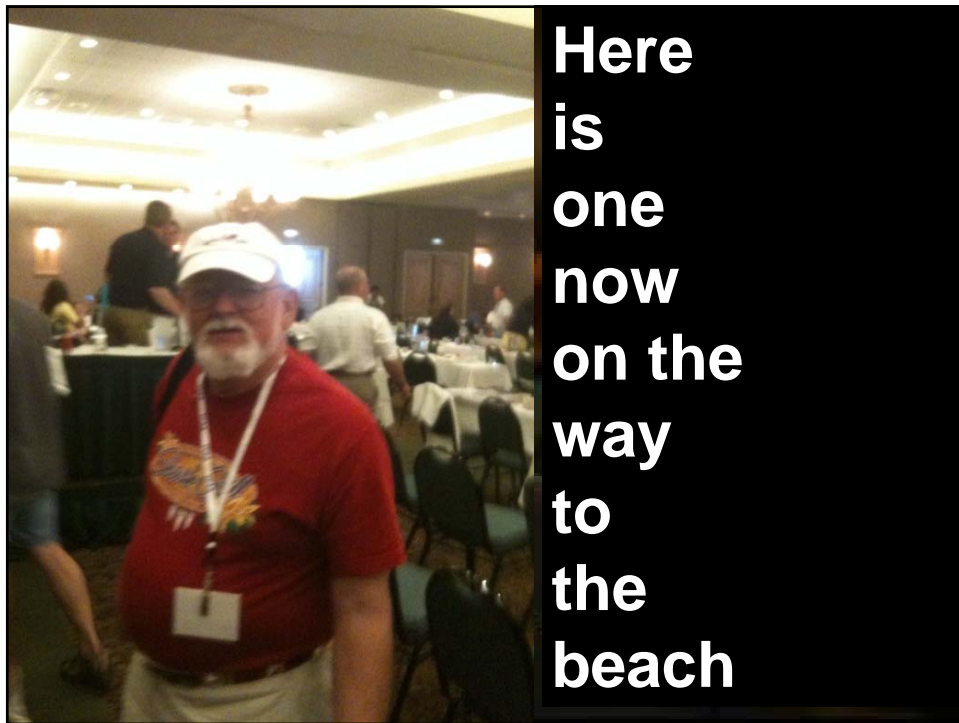
- Economic development projects often require city participation in the acquisition and disposition of land for the project.
- Projects range from acquisition/conveyance of land for retail, commercial and industrial projects to abandoned or unused right-of-way, streets or alleys.
- Problem is how to get land into hands of desired end user.

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I am not attending
the TCAA Meeting
for an Academic
Seminar I want to visit
With the attorneys
On the beach
they will
Know whose xyxysj
To Kick!



Here
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Rule Regarding Sale or Exchange of Land

- Except for limited exceptions, land owned by a city may only be sold or exchanged at auction or pursuant to notice and competitive bidding, and at fair market value according to an appraisal obtained by the city.
- No definition of “appraisal”.
- Can be broker opinion, property tax value or formal appraisal.

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Exceptions Include

- Land that cannot be independently developed because of its size, shape or lack of access to public roads § 272.001 (b) (1);
- Streets or alleys owned in fee or used by easement or acquired for such purposes § 272.001 (b) (2);
- Exchange of land or other real property interests originally acquired for streets, rights-of-way or easements for other land to be used for streets, rights-of-way, easements or other public purposes; § 272.001 (b) (3);

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Exceptions Include

- Land the city wants developed by an independent foundation § 272.001 (b) (4);
- Sale of land to another unit of government that has eminent domain power § 272.001 (b) (5); and
- Land located in a reinvestment zone that the city desires to have developed under a project plan adopted by the city for the zone (*Tax Increment Reinvestment Zone*) § 272.001 (b) (6).

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Undevelopable Tracts

- City may, in a private sale, convey narrow strips of land to a business prospect, or land that, because of its shape, lack of access to public roads or small areas, cannot be used independently.
- Make sure that the conveyance agreement requires the grantee to re-plat the property to incorporate the orphan tract.
- Fair Market Value is required.

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Transfer of Streets and Alleys

- City may convey streets or alleys owned in fee or used by easement in a private sale to the abutting property owner.
- Fair Market value is not required if conveyed to abutting fee owner.
- Streets or alleys not needed or required might be incorporated into adjoining tract for a project.
- Easement abandonment is to the abutting property owners.

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Exchange of Land Originally Acquired for Streets, et al.

- City may exchange land or other real property interest originally acquired for streets, rights-of-way or easements for other land to be used for streets, rights-of-way, easements or other public purposes.
- City can exchange such property with a business prospect, including a residential property owner, for other land to be dedicated for streets, rights-of-way, easements or used for other public purposes.
- Fair Market Value is not required if conveyed to abutting fee owner.

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Sale or Exchange for other public purposes

- City may exchange land that was originally acquired not only for streets and alleys for land for other public purposes including economic development purposes.
- Statute states “other public purposes” which is not defined.
- Tex. Const. Art III, Sec. 52-a provides the promotion of economic development constitutes a public purpose and may have expanded the definition of “other public purposes” for § 272.001 (b) (3).

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Sale or Exchange for other public purposes

- Perhaps an unintended consequence but if city may use its property, personnel and public funds to promote economic development then it logically follows that “other public purposes” includes exchange land for an economic development project.
- Thus city may exchange land originally acquired for streets and alleys for land for economic development project without competitive bidding.

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Independent Foundation

- City may transfer land that it wants to have developed by contract with an independent foundation.
- City (may acquire land if necessary and then) may transfer land to an independent foundation under a contract that requires the land to be developed by a specific end user for an economic development project without conducting an auction or notice and competitive bidding but for Fair Market Value.
- “Independent foundation” is not defined by statute.

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Independent Foundation

- Independent foundation may be chamber of commerce, Type A or B corporation or other non profit corporation formed by the city.
- Transaction must include a requirement that the property be conveyed by the independent foundation to the end user and developed according to the city required development criteria.
- Independent foundation is not subject to Ch. 272 of the Tex. Loc. Gov. Code.

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Transfer by Independent Foundation to End User

- Independent foundation may sell or convey the land to the desired end user without having to comply with the notice and competitive bidding requirements.
- Independent foundation may sell or convey the property to the end user with or without payment of the Fair Market Value.
- Independent foundation must still pay the city the fair market value of the land; however
 - City may fund the Fair Market Value purchase through Chapter 380 incentive.

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Transfer from Independent Foundation to End User

- City may provide Chapter 380 loan or grant to the independent foundation to fund all or a portion of the purchase from the city or to fund all or a portion of the end user purchase of the property from the independent foundation.
- Typically, the purchase agreement for the land between the city and the independent foundation includes a restriction agreement requiring the subsequent transfer of the land to the end user and for the end user to develop the land in accordance with the city requirements.

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Transfer by Independent Foundation to End User

- Restriction agreement may contain (1) an option to repurchase the land if the end user does not develop the land in accordance with the city specifications in the restriction agreement and/or (2) a right of first refusal in favor of the city if the end user elects to sell all or portion of the land to a third party within a certain time period.
- Option to repurchase typically allows city to repurchase the property at the price paid by the end user including any Chapter 380 incentive/reduction in the original purchase price, plus the market value of any improvements constructed on the land.

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Transfer by Independent Foundation to End user

- Right of first refusal typically allows city the right to purchase the land or portion thereof in the event the end user elects to sell the land or portion thereof, including any improvements at the lesser of the third party price or the price originally paid by the end user.
- Purchase of the land by the independent foundation and the subsequent transfer to the end user is done in a simultaneous closing.

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Transfer by Independent Foundation to End User

- Agreement between the independent foundation and the city typically provides that the land is being sold to the independent foundation for purposes of resale to the end user pursuant to § 272.001 (b)(4) for the fair market value according to an appraisal obtained by the city less an economic development grant which is defined as the difference between the fair market value of the land and the actual price to be paid typically \$100.00.*
- * There may be a separate Chapter 380 agreement directly between the city and the end user to reduce all or a portion of the fair market value purchase price.

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Assignment of Option to Purchase or Purchase Agreement

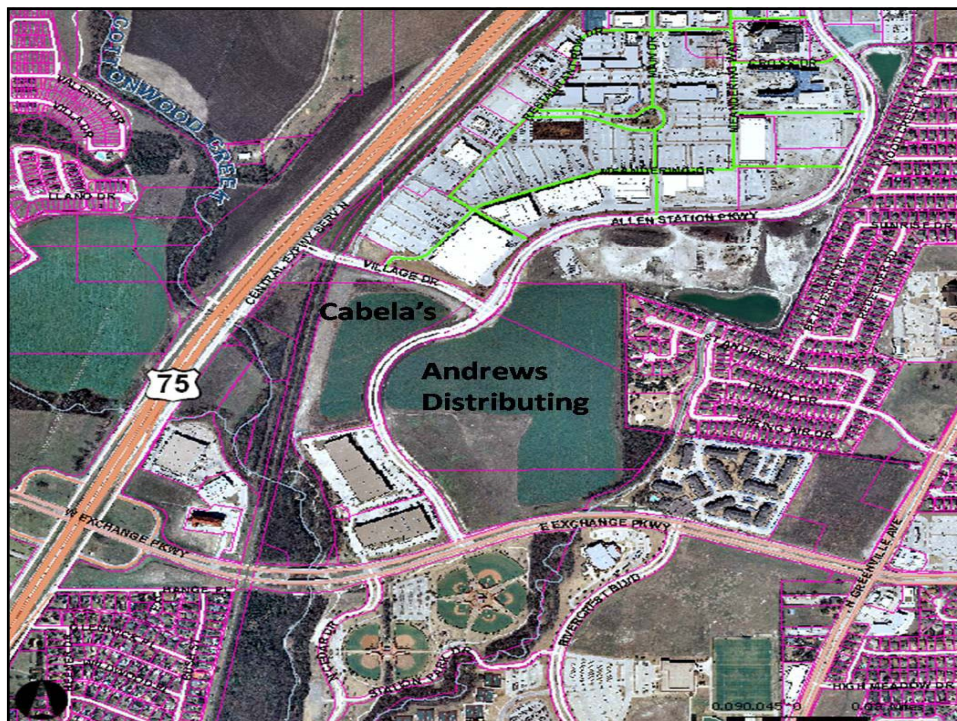
- As an alternative to the transfer of property to an independent foundation, the city may assign the city's right to purchase the land under the purchase agreement to the end user.
- As part of the transaction, the city may provide a Chapter 380 incentive grant to fund the purchase price to be paid by the end user.

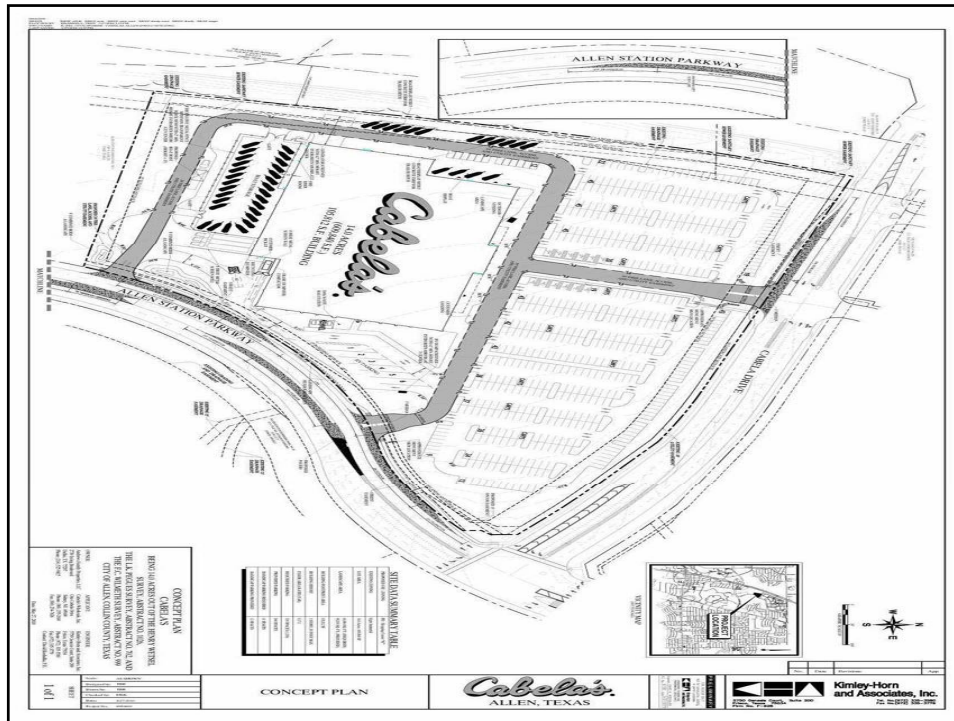
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Assignment of Option or Purchase Agreement

- Terms of grant is set forth in a separate Chapter 380 agreement or in the assignment of the purchase agreement between the city and end user.
- **Example:** Cabela's identified a site in the Village at Allen retail shopping complex.
- Targeted property was one that the City had an option to repurchase as part of a previous economic development transaction.

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Cabela's Project

- City negotiated a purchase agreement with the third party owner, the terms of which Cabela's reviewed and approved.
- City and Cabela's negotiated an assignment of the purchase agreement that contained additional provisions, such as a development restriction agreement to ensure the property was ultimately developed as required by the City.

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Private Sale Within a TIRZ

- City may sell real property it owns within a Tax Increment Reinvestment Zone (“TIRZ”) without auction, or notice and competitive bidding § 272.001(b)(6).
- Under Chapter 311 Tax Code City may convey real property that is located within a TIRZ in a private sale on any terms (less than fair market value).
- And for any price if the sale is necessary to implement the project plan for the TIRZ.

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Private Sale within a TIRZ

- Unclear whether the exception for the sale of the real property for a TIRZ project, which is generally limited to public improvements and infrastructure, and certain educational and transportation facilities would include transfer to end user for non public infrastructure.
- Property needed for development by a business prospect located within a TIRZ for other than the typical public improvements may be allowed if necessary to implement the project plan.

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Transfer to Political Subdivision with Eminent Doman

- City may transfer property to another political subdivision with eminent domain power without notice and competitive bidding or auction.
- Property may not be conveyed or exchanged for less than the fair market value.
- **Exception: Transfer should not be used for the purpose of transferring land to an economic development prospect.** AG has held a City is not authorized to transfer land to a private party for that private party's use utilizing a governmental entity as a pass-through.

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Final Thoughts



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